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Planning Commission Meeting: October 13, 2004

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: New Business

Report Prepared by: Troy Fujimoto

Public Hearing: Yes: _____ No: __X__

Notices Mailed On: N/A

Published On: N/A

Posted On: N/A

TITLE: **SITE AND ARCHITECTURAL APPROVAL AMENDMENT
(SA2004-89)**

Proposal: Request to have outdoor display or for-sale products at the front of the Ocean Supermarket

Location: 2 South Park Victoria Drive

APN: 088-04-078

RECOMMENDATION: Approval with conditions

Applicant: David Quach, 2 S. Park Victoria Drive, Milpitas, CA 95035

Property Owner: Bertram Berns, PO Box 8469, San Jose, CA 95155

Previous Action(s): S-Zone, Use Permits

General Plan Designation: Retail Sub-Center

Present Zoning: Neighborhood Commercial with "S" Combining District (C1-S)

Existing Land Use: Multi-tenant retail center

Agenda Sent To: Applicant/owner, as noted above

Attachments: Plans, picture
Notice to Abate letter dated August 19, 2004

PJ No. N/A

BACKGROUND

Currently the Ocean Supermarket is the largest tenant in the shopping center. Adjoining uses include various retail uses including restaurants and bakeries. The building is part of a larger shopping complex that includes another row of shops and a separate restaurant building.

A code enforcement action was taken (see Notice to Abate letter dated August 19, 2004) against the Ocean supermarket due to the unapproved outdoor display of product at the front of the store. To resolve the code enforcement action, the applicant has filed a S-Zone approval amendment to legalize the outdoor display of product.

Site and Area

The store and shopping center is located at the southeast corner of Calaveras Boulevard and Park Victoria Drive. Surrounding uses include residential to the east, south and north. Commercial uses are to the east and north with civic uses (sports center, school district offices) to the north as well.

PROJECT DESCRIPTION

The application is submitted pursuant to Section 42 ("S" Zone Approval) of the zoning ordinance. The applicant is requesting approval to have outdoor displays at the front of the Ocean Supermarket. The applicant is requesting to display food items such as fruits, vegetables and the like in an area offset to the left, at the front of the store. As proposed the applicant will only be displaying items during store hours as the merchandise is brought out when the store opens and is moved inside the store at closing time.

ISSUES

Conformance with the General Plan

The proposed use does not conflict with any General Plan Policies, and is consistent with Implementing Policy 2.a-I-3, which encourages pursuits which will strengthen and promote development through stability and balance and Policy 2.a-I-5 which maintains policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social, fiscal and land use constraints. These policies are intended to promote and encourage economic pursuits, within the existing environment and not impact it negatively. The proposed outdoor display will not negatively impact the shopping center or immediate area as the display will use high-quality, long-lasting materials and will not encroach on any walkways, tenant spaces or parking lot.

Conformance with the Zoning Ordinance

The proposed request is in conformance with the zoning code as it meets the purpose and intent of the Neighborhood Commercial (C-1) zoning district. The district provides for general commercial needs of the neighborhood and promotes stable, attractive development which will afford a pleasant shopping environment. To ensure that the outdoor display meets the purpose and intent of the zoning ordinance, *staff recommends* the outdoor display use materials that are of high-quality, long lasting and complimentary to the building. In addition, *staff recommends* the colors complement the colors of the building. To comply with these requirements, the

applicant has proposed to construct displays similar to that which is included in the Commission's packet.

To ensure that the display affords a pleasant, uncluttered and an overall attractive appearance, **staff recommends** that the outdoor display, including any shopping cart storage, be limited to no more than seventy-five (75%) of the tenant frontage and all display tags are similar in style and design. Lastly to ensure that the outdoor display does not become a nuisance for adjacent tenants, **staff recommends** that the outdoor display shall be limited to the tenants (store) frontage.

In addition, the proposed display area will not be within the 20-foot front yard setback, will not exceed the height limitation (35 feet) and will not impede any access into and out of the building.

Conformance with CEQA

The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities") of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION

Recommend approval by the Planning Commission of the S-Zone approval amendment (SA2004-89) based on the Findings and Recommended Special Conditions listed below:

FINDINGS

1. The proposed project is consistent with the General Plan in that the proposed project is helping to provide increased services and products to the City, while not negatively impacting the environment and existing land use.
2. The proposed project is consistent with the zoning ordinance, in regards to the purpose and intent of the Neighborhood Commercial zoning district.
3. The proposed project is categorically exempt from California Environmental Quality Act review as per CEQA Section 15301 (Existing Facilities).
4. The proposal will not negatively impact the immediate and surrounding area as the displays still allow adequate pedestrian access and is small enough to not result in any negative impacts to the neighborhood.

RECOMMENDED SPECIAL CONDITIONS

1. This S-Zone approval amendment SA2004-89 is for approval outdoor display at the Ocean Supermarket as shown on approved plans dated October 13, 2003. Minor modifications, as per Section 42-10-2 of the Milpitas Zoning Ordinance to approved plans may be approved by the Planning Division or Planning Commission Subcommittee. (P)
2. This project shall be conducted in compliance with all appropriate local, state, and federal laws and regulations. (P)
3. The outdoor display shall use materials that are of high-quality, long lasting and complimentary to the building. (P)
4. The outdoor display, including any shopping cart storage, is limited to no more than seventy-five (75%) of the tenant frontage. (P)

5. All associated display tags shall be similar in style and design. (P)
6. Any outdoor display is limited to the tenants store frontage and shall not be located in front of another tenants store frontage. (P)
7. The new displays shall be in conformance with all conditions of approval within 30 days (by November 13, 2004) of issuance of this permit. (P)

(P) = Planning Division



City of Milpitas

455 E. Calaveras Blvd.
Milpitas, California 95035



August 19, 2004

CERTIFIED MAIL

Ocean Supermarket
Attn: Hai Yang Inc.
2 S. Park Victoria Drive
Milpitas, Ca 95035

Subject: Notice to Abate-

- **Neighborhood Beautification Ordinance,
Title V, Chapter 500, Milpitas Municipal Code**
- **Zoning Ordinance,
Title XI, Chapter 10, Milpitas Municipal Code**

Dear Business Owner:

Our Office has been notified of a violation of this Ordinance at 2 S. Park Victoria Drive, Milpitas, Ca 95035, and in response, on July 27, 2004, staff inspected your property and observed large outdoor display of fruits, within view of the public right of way. Having this condition is in violation of the following:

Neighborhood Beautification Ordinance Section V-500-2.01

(h) (3) Miscellaneous

Zoning Ordinance Section XI-10-17.09

Standard Conditions

It is the responsibility of the property owner/occupant to abate (V-500-1.01) violations. A suggested method of abatement would be to discontinue the outdoor display and sales of products within public view. We must hereby notify you that you have thirty-one (31) calendar days from the date of this Notice to abate this condition (V-500-3.01). An inspection to verify compliance will be conducted on or after September 19, 2004.

Please see the attached list of City resources available to assist you. If you cannot comply with this Notice by the due date because doing so will be an undue hardship, *and you are not acting as a landlord of rental property*, you may request an extension by stating your reason(s) in writing. Your request must be received within seven (7) calendar days of the date of this Notice, in this case **August 26, 2004**.

We are confident that this violation will be abated as required. However, if the condition is not abated, the Ordinance provides that, the City may abate the violation and recover the costs of abatement from you and/or impose a fine of \$100. If you have any questions, please contact me at (408) 586-3072.

Thank you for your commitment to keeping Milpitas beautiful,

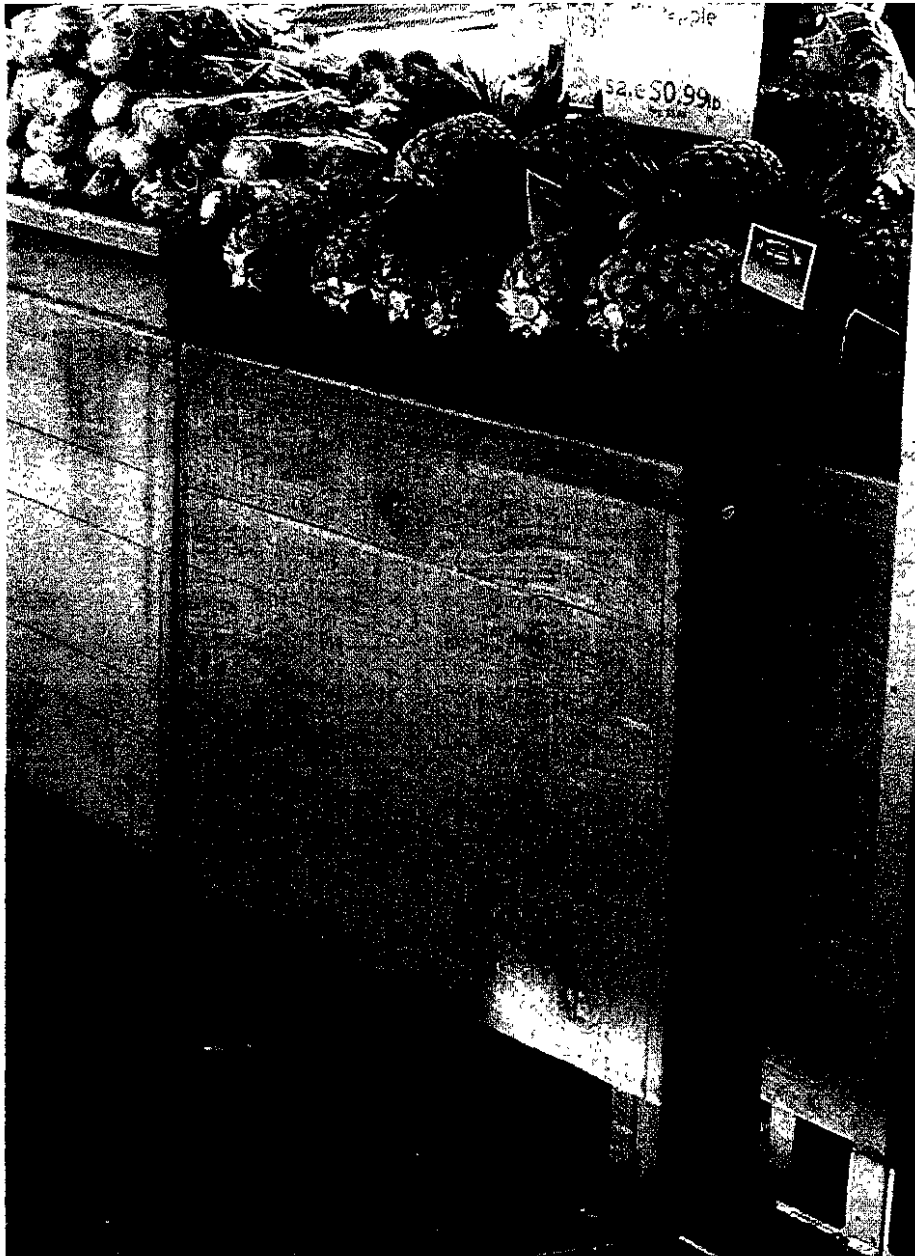

Zulema C. Maggi
Housing and Neighborhood Preservation Specialist

Enclosure: Request for an extension and photos

CC:
Troy Fujimoto, Planning Division 408-586-3287

Berns Bertram, P O Box 8469, San Jose, Ca 95155

Domestic Return Receipt		3811, August 2001		102595-02-M-15	
COMPLETE THIS SECTION				COMPLETE THIS SECTION	
1. Article Addressed to: Ocean Supermarket Attn: Hai Yang Inc. 25. Park Victoria Drive Milpitas, CA 95035				Postmark Date 1	
2. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.				Postage \$ Restricted Postage (if Required) \$ Delivery Fee (if Required) \$ Postage & Fees \$	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.				Postmark Date 1	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No				Postmark Date 1	
5. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:				Postmark Date 1	
6. Received by (Printed Name) X1 Hai Yang Date of Delivery 8/2/01				Postmark Date 1	
7. Signature X1 Hai Yang				Postmark Date 1	
8. Address Agent				Postmark Date 1	



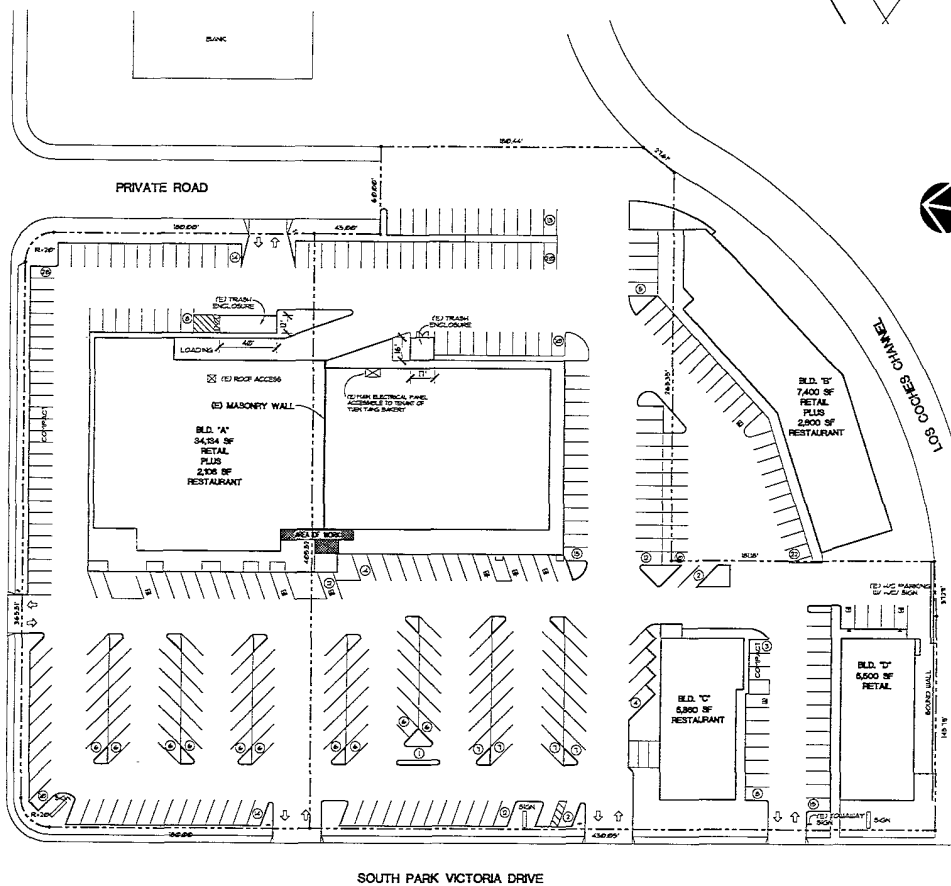


PROPOSED FLOOR PLAN AND ELEVATION

1/4"	2
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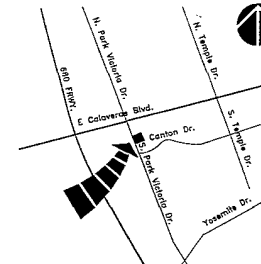
*14 SCOPE OF WORK

TO PROPOSE 13 SEASONALLY FRUIT DISPLAY BOXES IN FRONT OF THE MAIN ENTRANCE.
TO ATTRACTING CUSTOMERS AND INCREASING MORE VARIETY SUPPLY OF THE SUPERMARKET.



SITE PLAN

1"=40'	1
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OWNER
DAVID QUACH
2 S. PARK VICTORIA DR.
MILPITAS, CA 95035
(408) 210-0832

**OUTDOOR SEASONALLY
DISPLAY AREA
TENANT IMPROVEMENT**

REVISIONS

SHEET TITLE:
SITE PLAN
PARTIAL FLOOR PLAN
FRONT DISPLAY ELEVATION

DATE	PROJECT NO.
AUG. 25, 2004	04-824

SCALE
AS SHOWN

SHEET

A-1

OF SHEETS